

**GENERAL TERMS AND CONDITIONS
DENITH ENGINEERING (PTY) LTD.**



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1. INTRODUCTION AND DEFINITIONS

- 1.1. No order for goods or services from DENITH ENGINEERING (PTY) LTD (Referred to as "DENITH") shall be considered as valid before it is confirmed in writing. By accepting a Purchase Order (PO) from DENITH the supplier enters into a contract with DENITH of which these General Terms and Conditions form an integral part.
- 1.2. The following definitions apply: "Agreement" or "Contract" shall mean the PO and every document referred to in the PO, including these terms and conditions. The "ordered goods or services" shall mean everything that shall be delivered by the supplier pursuant to the Agreement, including but not limited to hardware, services, drawings, certificates and other necessary or useful documentation. The "delivered goods or services" shall mean the part of the ordered goods and services that have actually been delivered by the supplier. "Force Majeure" shall mean an occurrence beyond the control of the party affected provided that such party could not reasonably have foreseen such occurrence at the time of entering into the Agreement or could not reasonably have avoided or overcome it or its consequences. Other terms are defined in the text below.

2. PRICES

- 2.1. The prices listed in the Contract shall be considered as binding unless otherwise stated explicitly.
- 2.2. If not otherwise stated in the Contract, the prices listed include all necessary packing, forwarding, transportation and insurance in accordance with the stated code of INCOTERMS 2000.

3. CONFIRMATION OF ORDERS

- 3.1. The PO shall be signed by the supplier which warrants the authority of the signatory and be returned within 7 days from the date of receipt. Failure to adhere to this by the supplier will be construed by DENITH as no obligations on DENITH for the ordered goods and services or as acceptance in full of the Contract for any delivered goods and services. Every PO shall be subject to these terms and conditions unless expressly varied in writing and signed by both parties thereto.
- 3.2. Terms and conditions which differ from these general terms and conditions may in exceptional cases be accepted by Denith, but in such event, such variation shall be expressly stated on the PO or later be amended on the PO and shall only become effective once signed by both parties. Until such amendment is agreed to and signed by both parties, the terms of the PO and of these general terms and conditions shall be applicable.

4. COMPLIANCE VERIFICATION

- 4.1. DENITH reserves the right to make such investigations and tests as are deemed desirable by DENITH to verify that the delivered goods and services are in compliance with the PO and are fit for purpose.
- 4.2. The supplier is obliged to render assistance, at no additional cost to DENITH, in connection with such verification, where and when it can be carried out.
- 4.3. The supplier is obliged to immediately, or within an agreed time limit, correct any faults and defects as pointed out by DENITH inspectors, without additional cost for DENITH.
- 4.4. Any verification carried out by DENITH does not relieve the supplier of the full responsibility for delivery being affected in accordance with the Agreement.

5. SHIPPING INSTRUCTIONS

Not Used.

6. PACKING LISTS

- 6.1. Each packing list shall only cover consignments for one PO. If the consignment for one PO requires more than one package, each package shall be followed by a specified list of its contents.
- 6.2. All goods are to be clearly marked in accordance with the packing lists. The packing lists are to contain the DENITH project reference, terms of delivery, means of transport (name of vessel in the case of sea transport), the individual marking of the goods, and number of packages in the consignment, contents, weight and date of dispatch.
- 6.3. Two copies of packing lists shall be accompanying the consignment and one copy shall be emailed DENITH's assigned Project Manager when the package leaves the supplier.

7. COPIES OF INVOICES AND CERTIFICATES

- 7.1. Any invoice shall relate to one PO only. The invoice shall be sent to DENITH address in duplicate.
- 7.2. If the order implies delivery of certificates, these shall be delivered on the same date as the goods, however delivered separately to DENITH Offices for the attention of the Project Manager. As a delivered certificate shall be regarded as part of a delivery, the invoice for any delivery will not be paid until all applicable certificates for that delivery have been received.

8. DELIVERY

Not Used.

9. DELAYS

- 9.1. If the ordered goods and services are not delivered within the agreed delivery date, and the late delivery is not caused by Force Majeure, DENITH is entitled to deduct 0.5% of the total PO value for each day, which the date of delivery is exceeded, up to and not exceeding 10% of the total PO value as liquidated damages.
- 9.2. Any document such as certificates, drawings, pipe schemes and wiring diagrams, mounting guidance, spare part lists, data-sheets, etc. specified in the PO or which are necessary for installation and operation, are considered as a part of the ordered goods and services, and any late delivery of such documents will be subject to 9.1 above.
- 9.3. If transpires that the supplier will be unable to meet the agreed delivery date, it shall immediately notify DENITH of the delay and reasons therefor. Should it fail to so notify DENITH of any anticipated delay, then even if such delay was due to Force Majeure, the supplier will not be entitled to the benefits of extra time applicable consequently upon a Force Majeure delay.
- 9.4. The supplier shall do whatever needed to make any delay as short as possible, and do his utmost to avoid or reduce any negative impact on DENITH from such delays.
- 9.5. If the delay exceeds cumulatively 20 days, when in accordance with 9.1 DENITH is entitled to maximum liquidated damages, DENITH may cancel the order. If the Force Majeure event lasts for more than 20 days, then either party may cancel the order by giving notice in writing to the other party.
- 9.6. If the supplier must claim Force Majeure for any reason, he shall immediately inform DENITH in writing. Failing to do so, any delay from the situation shall be deemed as normal delay until the information is received by DENITH in writing.

10. PASSING OF TITLE TO GOODS

Not Used.

11. WARRANTY

- 11.1. Supplier shall perform the services using reasonable skill, care and diligence, but shall have no liability to DENITH, whether in contract, delict (including breach of statutory duty) or otherwise howsoever arising, for the performance of the services except to the extent that supplier has been negligent in the provision of the services. Supplier gives no warranty, express or implied, as to, fitness for purpose or suitability of the services, and DENITH waives any terms, conditions or warranties otherwise incorporated or implied by law to the fullest extent permitted by law.
- 11.2. DENITH shall give notice of any claimed breach of warranty immediately after discovery. Notwithstanding, any right derived from this warranty shall be barred in case of failure to give notice within 12 months following completion of performance of supplier's work under this PO in advance.

12. TERMS OF PAYMENT

- 12.1. If an invoice for delivered goods and services is established and delivered to the address of DENITH in accordance with the Contract, payment will be effected within 30 days of receipt of statement.
- 12.2. If supplier fails to include a reference to the number of the PO on the invoice, DENITH shall be entitled to return the invoice to supplier, unpaid, for correction.
- 12.3. Advanced payment will normally not be granted. Any exception to this must be agreed in writing and supplier must provide an adequate bank guarantee for the amount paid advance.
- 12.4. DENITH reserves the right to retain the last instalment or 10% of the invoice amount until the delivered goods and services have been verified and accepted.

13. MODELS

- 13.1. Models which are made by the supplier for DENITH's account shall be considered DENITH's property and must not be used for any other purposes without DENITH's consent.
- 13.2. When requested to do so, the supplier shall immediately return models and related drawings, together with any duplicates or copies received from DENITH or made by supplier, to DENITH.

14. DISPUTES

- 14.1. This Contract shall be governed by South African law. All and any disputes arising out of or in connection with this contract shall be referred to arbitration. The arbitration shall be held in Cape Town in accordance with the Rules of the Arbitration Forum of South Africa.

15. QUALITY ASSURANCE

- 15.1. The supplier warrants that it has implemented and documented system for quality assurance pursuant to relevant parts of ISO 9001 or equivalent.
- 15.2. DENITH shall have the right to conduct audits and verifications of the supplier's and its sub-supplier's quality assurance system any time.

16. CHANGES

- 16.1. DENITH is entitled to order changes to the ordered goods or services. Such changes can include increasing or reducing the quantities, modifying the character, quality, type or method of production of the ordered goods or services or any part thereof together with changes to the delivery schedule, provided that such changes shall not exceed what the supplier reasonably could have expected when it accepted the PO.
- 16.2. The supplier shall within 10 days of receipt of DENITH's demand for a change, submit an estimate to DENITH in writing including:
- a) Description of the work required to implement the change.
 - b) Any impact on the prices.
 - c) Any impact on the schedules. If the supplier does not respond with such estimate within the time stipulated, it shall be deemed that the change required will have no impact on the prices or schedules, and the change order will be issued accordingly.
- 16.3. DENITH shall inform the supplier about its views on the estimate mentioned in article 16.2 above within 10 days after receipt of the estimate.
- 16.4. The final impact of a change on costs and prices shall be established by negotiations between the parties before the change order is issued.
- 16.5. A change order shall expressly be named as such, have the same format as the original PO and contain a full description of the modifications it introduces in the Contract.
- 16.6. On DENITH's request the supplier shall without undue delay implement a change order, even if the parties do not agree about all the consequences on the Contract of such change order.
- 16.7. Until the parties have agreed on the consequences on the Contract of a particular change requirement, DENITH shall pay the supplier any undisputed amounts related to the change.
- 16.8. Any delay arising out of such change order shall not be attributable to supplier, if such delay is caused by DENITH.

17. CANCELLATION

- 17.1. DENITH may at any time cancel the Contract by informing the supplier in writing.
- 17.2. In case of such cancellation DENITH shall pay:
- a) Any accrued, unpaid part of remuneration due to the supplier for work performed up to the date of termination.
 - b) Any direct costs incurred by the supplier, unavoidable as a direct consequence of the termination.
- 17.3. Upon DENITH instructions, the supplier shall use its best endeavours to cancel any subcontracts on terms acceptable to DENITH.

18. INSURANCE

- 18.1. The supplier shall maintain all necessary insurances as are relevant to the services to be provided. Upon request by DENITH, the supplier shall furnish DENITH with copies of the relevant insurance policies.

19. CONFIDENTIALITY

- 19.1. All information which the parties exchange in connection with the Agreement shall be kept confidential. Either party may, however, provide confidential information to third parties to the extent necessary for the production, use and control of the ordered goods. In such circumstances the parties shall procure a written confidentiality declaration from the third party before the information is disclosed.
- 19.2. The supplier shall not make publicly known any information concerning the ordered goods or the Agreement without DENITH's written permission. Such permission shall not be unreasonably withheld.

20. INVENTIONS/PATENTS

- 20.1. Inventions which the supplier makes during the performance of the work shall remain the property of the supplier. DENITH shall, however, become the owner of inventions which the supplier does as a part of the work for DENITH, which is based mainly on technical information received from DENITH. The supplier shall inform DENITH about such inventions which shall become DENITH's property, and the supplier shall provide DENITH with necessary assistance so that DENITH may patent the invention. DENITH shall reimburse the supplier for all reasonable expenses incurred in respect of securing such patent, including remuneration to the supplier's employee pursuant to applicable legislation.
- 20.2. The supplier shall extend to DENITH an irrevocable, royalty free, nonexclusive licence to all inventions which are or may come under the supplier's control to the extent this is necessary for the production, operation, maintenance and repair of the ordered goods and services.
- 20.3. The supplier warrants that the delivered goods and services, and the use of them will not be in conflict with any patents held by third parties or in conflict with other proprietary rights. The supplier hereby agrees to indemnify DENITH from and against all claims that may arise due to the breach of third parties patents rights or other proprietary rights.

21. TERMINATION FOR DEFAULT

- 21.1. If the supplier is in material breach of its obligations under the Contract and has not rectified the material breach within 15 days of notification thereof by DENITH, DENITH shall be entitled to terminate the Contract with immediate effect by written notice to the supplier.

22. LIABILITIES AND INDEMNITIES

- 22.1. The supplier shall be responsible for and shall indemnify, defend and hold DENITH harmless from and against all liabilities in respect of, (a) loss of or damaged property of supplier or its subcontractors whether owned, hired, leased or otherwise provided by supplier or its subcontractors arising from or related to the performance of the PO, and (b) personal injury including death or disease to any person employed by supplier or its subcontractors arising from or related to the performance of the PO.
- 22.2. Any claims against supplier by DENITH shall be deemed to be irrevocably waived and absolutely time barred upon the expiry of one year from the submission date of the supplier's report or invoice, whichever is the earlier, to DENITH in relation to the project undertaken hereunder.